

appurtenances, and one 2005 Harley Davidson FLHRCI, California License 20L7513, VIN 1HD1FRW375Y647852, its tools and appurtenances ("Defendant Properties").

2. The parties have agreed to a settlement which is hereinafter described in its particulars:

a. **Count 1: \$19,535.00 in U.S. Currency:** \$17,035.00 of the defendant currency shall be forfeited and condemned to the United States pursuant to Title 21, United States Code, Section 881. \$2,500.00 of the defendant currency, less any debt owed to the United States, any agency of the United States, or any other debt in which the United States is authorized to collect, shall be returned to the claimant, Mark Shimel, either directly or through his attorney of record, Richard M. Barnett.

b. **Count 2: One 2004 Nissan 350Z, California License 6PWC703, VIN JN1AZ36A54T011868, its tools and appurtenances:** The defendant vehicle, one 2004 Nissan 350Z, shall be condemned and forfeited to the United States pursuant to Title 21, United States Code, Section 881. The U.S. Marshals Service shall then sell the defendant vehicle with the proceeds of the sale to be distributed under the following terms. Costs incurred by the United States incident to the seizure and custody of the defendant vehicle, if any, shall be paid from the proceeds of the sale before any distribution is made to the United States. After costs are paid, the United States shall then receive the remaining net proceeds.

c. **Count 3: One 2005 Harley Davidson FLHRCI, California License 20L7513, VIN 1HD1FRW375Y647852, its tools and appurtenances:** The United States has agreed to the return of the defendant vehicle, one 2005 Harley Davidson FLHRCI, to claimant Mark Shimel, either directly or through his attorney of record. All costs incurred by the United States incident to the seizure and custody of the defendant vehicle, one 2005 Harley Davidson FLHRCI, shall be borne by the United States.

3. The terms of this settlement do not affect the tax obligations, fines, penalties, or any other monetary obligations the claimant owes to the United States.

4. The person or persons who made the seizure or the prosecutor shall not be liable to suit or judgment on account of such seizure in accordance with Title 28, United States Code,

1 Section 2465. Claimant has agreed that by entering into this joint motion, he has not “substantially
2 prevailed” within the meaning of 28 U.S.C. § 2465. All parties shall bear their own costs and
3 expenses, including attorney fees. Judgment shall be entered in favor of the United States on
4 its complaint.

5 5. Claimant has warranted and represented as a material fact that he is the sole owner
6 of the defendant properties and has further warranted that no other person or entity has any right,
7 claim or interest in the defendant properties, and that he will defend and indemnify the
8 United States against any and all claims made against it on account of the seizure and forfeiture
9 of the defendant properties.

10 6. The Claimant, his agents, employees, or assigns, shall hold and save harmless the
11 United States of America, its agents and employees, from any and all claims which might result
12 from the seizure of the defendant properties.

13 The Clerk of Court shall enter judgment in favor of the United States and terminate the
14 case.

15 **IT IS SO ORDERED.**

16 DATED: October 29, 2012

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18 Hon. Michael M. Anello
19 United States District Judge
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